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December 14, 2022

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VIA ELECTRONIC FILING

Hon. Stephen L. Crocker
United States District Court Magistrate Judge
United States District Court
for the Western District of Wisconsin
120 N. Henry Street
Madison, WI 53703

Re: Friends of Blue Mound State Park v. Wisconsin Department of Natural Resources et al. - 3:21-cv-00676-jdp

Dear Judge Crocker:

We are writing to submit an additional piece of evidence that was discovered after the briefing concluded in this case.

On July 7, 2022, the Friends filed a Motion to Compel Defendants' Complete Responses to Plaintiff's Discovery Requests. This Court held a telephonic hearing on August 10, 2022 and denied the Friends' motion. The Court directed the parties to discuss a mutual way to address the Friends' concern that not all documents were produced during discovery. On August 15, 2022, Attorney Potts sent the Wisconsin Department of Justice (DOJ) an email requesting the following documents:

- All non-privileged correspondence, including emails and text messages, between Ms. VanLunduyt and Diane Brusoe sent or received anytime between August 1, 2021 through August 1, 2022.
- All non-privileged correspondence, including emails and text messages, between Ms. VanLunduyt and Steven Schmelzer sent or received anytime between August 1, 2021 through December 31, 2021.
- All metadata related to the allegedly "draft" August 5, 2021 agenda.

After failing to receive a response from DOJ, the Friends submitted a public records request to the Wisconsin Department of Natural Resources (WDNR) on August 26, 2022 requesting the

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same documents. WDNR concluded its production of the August 26, 2022 public records request on December 7, 2022.

In reviewing the documents from the public records request, the Friends found the attached document (Exhibit 3 to the Potts Declaration), a statement by one of the primary witnesses in this case, Missy VanLanduyt. The correspondence in this document states, “Friends groups as an entity are not considered agents of the state.” Given that this statement is the opposite position the WDNR is now taking in the briefing of this case, we felt compelled to provide this document to the Court. The WDNR has repeatedly made the argument that the Friends group is a creature and agent of the state created exclusively to support WDNR programs. (Defendants’ Reply Brief in Support of Motion for Summary Judgment, ECF No. 67, 5; Defendants’ Brief in Opposition to Plaintiff’s Motion for Summary Judgment, ECF No. 60, 8, 18; Defendants’ Brief in Support of Motion for Summary Judgment, ECF No. 56, 9, 22). Yet, this document plainly contradicts this position.

Attached is a declaration from Attorney Potts to authenticate the accuracy of the additional evidence being submitted.

Respectfully,

/s/ Brian H. Potts
Brian H. Potts

Counsel for Friends of Blue Mound State Park